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Supreme Court, U.S.
FILED

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JEREMY SMITH,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida First District Court of Appeal

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PETITION FOR WRIT OF CERTIORARI

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COUNSEL FOR THE PETITIONER

A. QUESTIONS PRESENTED FOR REVIEW

1. Whether the Petitioner's guilty plea was invalid and was not knowing, intelligent, and voluntary as required by the Due Process Clause of the Fourteenth Amendment to the Constitution because the Petitioner was incompetent at the time of the plea hearing.

2. Whether the Due Process Clause of the Fourteenth Amendment to the Constitution requires a court to conduct a competency evaluation prior to accepting a guilty plea from a criminal defendant when the record affirmatively establishes that the defendant suffers from "severe" mental health issues.

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The Petitioner, JEREMY SMITH, respectfully prays the Court to issue its writ of certiorari to review the judgment of the Florida First District Court of Appeal entered in this case on November 23, 2009. (Pet. App. 1a).[1]

D. CITATION TO OPINION BELOW

Smith v. State, 22 So. 3d 544 (Fla. 1st DCA 2009).

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida First District Court of Appeal rendered on

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[1] References to the appendix to this petition will be made by the designation "Pet. App." followed by the appropriate page number and the letter "a."

November 23 , 2009. (Pet. App. 1a).[2]

F. CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the Constitution provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law." Constitutional due process principles require that waivers of rights during plea proceedings must be done with a knowing, intelligent, and voluntary understanding of the rights being waived. *See, e.g., Boykin v. Alabama*, 395 U.S. 238, 242 (1969).

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[2] Because the state appellate court did not issue a written opinion, the Petitioner was not entitled to seek review in the Florida Supreme Court. *See Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980).

G. STATEMENT OF THE CASE

In 2005, the Petitioner was charged in state court with first-degree murder as a result of an incident that occurred in Jacksonville, Florida. The Petitioner was twenty-five years old at the time of the incident. The victim of the incident was the Petitioner's roommate.

On June 27, 2006, the Petitioner entered a guilty plea to the lesser offense of second-degree murder. Pursuant to the plea agreement, the Petitioner was sentenced to forty years' imprisonment. Notably, during the plea colloquy, the trial judge asked the Petitioner's counsel whether he was "aware of any mental health issues regarding" the Petitioner. (Pet. App. 14a). The Petitioner's counsel answered:

> [DEFENSE COUNSEL]: Yes sir. I think he has had some *severe* mental health issues. They have had him seen

> by a doctor, the doctor has told us that he is competent.
>
> Also, Mr. *Smith probably up to about two and a half months ago had been taking some psychotropic medications at the jail. He has been taken off those psychotropic medications, and he is not on any medications at this time.*
>
> THE COURT: And that was at the doctor's direction?
>
> [DEFENSE COUNSEL]: That was a doctor's direction from the jail. I discussed it with our doctor, our confidential doctor, and the confidential doctor did not disagree with it.

(Pet. App. 14a) (emphasis added).[3] Despite the assertion on the record that the Petitioner suffered from "severe" mental health issues, the trial judge did not order that the Petitioner undergo a competency evaluation and the trial judge did not directly question

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[3] Prior to the incident in the instant case, the Petitioner had been civilly committed in Iowa for his mental illness (after he attempted suicide).

the doctor(s) who was/were treating the Petitioner to ensure that the Petitioner was competent at the time of the plea hearing.

The Petitioner's parents subsequently retained counsel to pursue a state postconviction motion. The Petitioner thereafter filed a timely postconviction motion pursuant to Florida Rule of Criminal Procedure 3.850.[4] Counsel for the Petitioner also filed a motion for a competency evaluation. During the state postconviction proceedings, counsel for the Petitioner

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[4] Undersigned counsel submits that the Petitioner was not only incompetent at the time of his plea hearing, but that he continues to be incompetent to this day. As a result, the Petitioner was not aware of his right to pursue a federal habeas petition pursuant to 28 U.S.C. § 2254. Unfortunately, by the time that the Petitioner's parents retained postconviction counsel, the time period to file a § 2254 petition had expired. Hence, the instant petition is the last opportunity that the Petitioner will have to seek judicial review of whether he was competent at the time that he entered his guilty plea.

retained Dr. Darren M. Rothschild, a board certified forensic psychiatrist. Dr. Rothschild evaluated the Petitioner and prepared a report; the report was submitted during the state postconviction proceedings. In his report, Dr. Rothschild concluded that the Petitioner suffers from a severe mental illness and the Petitioner was not competent at the time that he entered his guilty plea in this case. Dr. Rothschild stated the following regarding the Petitioner's mental illness:

> Jeremy Smith is a 29 year old, single, Caucasian male currently serving a 40 year prison sentence after pleading guilty to second-degree murder on June 27, 2006. Mr. Smith has a history of a severe, psychotic mental illness, which first manifested and necessitated involuntary, psychiatric hospitalization in 2004, one year prior to killing the victim. He has continued to have unquestioned problems with severe mental illness, i.e., Schizoaffective Disorder, which has required intensive,

inpatient psychiatric treatment with Florida Department of Corrections (DOC), most recently at Lake Correctional Institute. His psychotic mental illness manifests with auditory hallucinations (hearing voices), visual hallucinations (seeing the faces and bodies of individuals that are not there), delusions of reference (believing that unrelated news or neutral stimuli are directly related to him when they are not), and persecutory delusions including delusions of thought control and mind reading. He also suffers from recurrent episodes of severe depression. Related to compliance with prescribed psychotropic medication, the severity of his psychotic disorder waxed and waned prior to entering the Florida Department of Corrections. He stopped taking his medications approximately six to eight weeks before the killing and had an associated return of persecutory delusions, which had remitted prior to the taking while taking prescribed medications. According to Mr. Smith and his family, while he was awaiting trial in the Duval County Jail, psychotropic medications were restarted and subsequently stopped, i.e., before he changed his plea to guilty. Subsequent to entering the DOC, his mental condition decompensated with greater severity and

> persistence of psychotic symptoms, in part related to two or three incidents of Mr. Smith suffering sexual assaults. He has subsequently experienced symptoms of Post-Traumatic Stress Disorder (PTSD) with flashbacks to the sexual assaults, nightmares, hallucinations of the perpetrators' voices, and recurring thoughts of the traumatic events. His perceptual disturbances, i.e., auditory hallucinations, visuals hallucinations, and paranoia are currently intertwined with symptoms of PTSD.

(Pet. App. 5a-7a). Dr. Rothschild questioned whether the Petitioner was competent at the time of the plea hearing in light of the fact that: (1) the Petitioner was not taking his psychotropic medications at the time of the plea hearing and (2) Florida Department of Corrections officials concluded that the Petitioner was suffering from mental illness shortly after the guilty plea:

> Due to his severe mental illness and possible lack of treatment at the time, I have significant concerns about

> the defendant's competency to proceed when he changed his plea to guilty on [June 27], 2006. Prior to the plea change, Mr. Smith was evaluated by a forensic psychologist, William Meadows, Ph.D., on November 11, 2005, December 22, 2005, and June 6, 2006. Dr. Meadows opined that at the time of the evaluations, the defendant was competent to proceed. *However, Dr. Meadows was not aware* if and what psychotropic medications the defendant was taking at the times of the evaluations or *if antipsychotic medications were continued or stopped prior to the plea change.* The defendant's family stated that Duval County Jail healthcare providers prescribed medications to treat Mr. Smith's mental illness, but they were stopped prior to his plea change. *A few days after Mr. Smith changed his plea, when he entered the Department of Corrections, Mr. Smith was floridly psychotic with disorganized thoughts, hallucinations, and delusion[al] thinking (a mental state incongruent with competence to proceed in court).*

(Pet. App. 10a-11a) (emphasis added).[5] As a result of

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[5] Although defense counsel at the plea hearing claimed that he had discussed the Petitioner's discontinuation of medication with his "confidential doctor" and the doctor "did not disagree with it," in his

Dr. Rothschild's findings, postconviction counsel alleged that the Petitioner was not competent to enter a guilty plea.[6]

On September 30, 2008, the state trial judge denied the motion for a competency determination. On December 16, 2008, the state trial judge summarily denied the Petitioner's postconviction motion (without holding an evidentiary hearing). In the order, the state trial judge held that the Petitioner's competency claim is "directly rebutted by the record." The Petitioner timely appealed the state trial judge's order. On November 23, 2009, the Florida First District Court of

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report, Dr. Rothschild *refutes this allegation*: "Dr. Meadows was *not* aware . . . if antipsychotic medications were continued or stopped prior to the plea" hearing. (Pet. App. 10a-11a) (emphasis added).

[6] *See* Sup. Ct. R. 14(1)(g)(i). The issue raised in this case was timely and properly raised in the state court proceedings below.

Appeal *per curiam* affirmed the order summarily denying the Petitioner's postconviction motion. (Pet. App. 1a). The Petitioner remains incarcerated.

H. REASON FOR GRANTING THE WRIT

The questions presented are important and have a potential impact on all criminal prosecutions nationwide.

This case provides the Court with an opportunity to reexamine/reemphasize the procedures that courts must follow before accepting guilty pleas from criminal defendants with mental health issues. Recent studies have revealed that a significant number of criminal defendants suffer from mental health problems. "In the United States each year, approximately 1 million detentions in county jails involve persons with serious mental illnesses." Haya Ascher-Svanum et al., *Involvement in the US Criminal Justice System and Cost Implications for Persons Treated for Schizophrenia*, BMC Psychiatry Journal 1, 4 (Jan. 2010), available at

http://www.biomedcentral.com/1471-244X/10/11.

"These individuals are imprisoned about 8 times more frequently than they are admitted to state mental hospitals and are incarcerated for significantly longer time than other inmates." Ascher-Svanum et al., *Involvement in the US Criminal Justice System and Cost Implications for Persons Treated for Schizophrenia*, *supra* at 4. In 2005, "more than half of all prison [] inmates had a mental health problem, including 705,600 inmates in State prisons [and] 78,800 in Federal prisons." Dept. of Justice, Bureau of Justice Statistics, Special Report, Mental Health Problems of Prison and Jail Inmates (NCJ 213600, 2006). A substantial majority of all defendants in the criminal justice system resolve their cases by entering guilty pleas. *See, e.g., United States v. Coney*, 390 F. Supp. 2d 844, 852 (D. Neb. 2005) ("guilty pleas resolve

nearly 90 percent of all federal criminal cases"). It follows that a substantial majority of all mentally-ill criminal defendants enter guilty pleas. The Petitioner submits that the dilemma of properly recognizing those criminal defendants who suffer from mental illness and/or who are incompetent has become the elephant in the criminal courtroom that can no longer be ignored or overlooked.

Unlike a trial, where a criminal defendant will likely spend several hours in the courtroom (thereby allowing the judge and the attorneys an opportunity to observe any signs of mental health concerns), a criminal defendant who enters a guilty plea will likely spend very little time in the courtroom and hence there is only a small window within which to see any signs of mental health problems. Therefore, it is imperative that a judge be proactive in addressing any mental

health concerns prior to accepting a guilty plea.

A criminal defendant "may not waive his right to counsel or plead guilty unless he does so 'competently and intelligently.'" *Godinez v. Moran*, 509 U.S. 389, 396 (1993) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938)). In order for a defendant to "competently" enter a guilty plea, the defendant must have "a rational as well as factual understanding of the proceedings against him." *Godinez*, 509 U.S. at 396 (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)).[7]

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[7] In *Boykin*, the Court stated that "[a] plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." *Boykin*, 395 U.S. at 242. The Court explained that a defendant waives numerous constitutional rights as a result of a guilty plea:

> Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a

In *Drope v. Missouri*, 420 U.S. 162, 171 (1975), the Court cited Blackstone and explained that "one who became 'mad' after the commission of an offense should not be arraigned for it 'because he is not able to plead to it with that advice and caution that he ought.'" (Quoting 4 W. Blackstone Commentaries,* 24).[8] The Court explained that the prohibition on proceedings against an incompetent defendant "is fundamental to an adversary system of justice." *Drope*, 420 U.S. at

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> state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth. Second, is the right to trial by jury. Third, is the right to confront one's accusers.

Id. at 243 (citations omitted).

[8] In *Drope*, the Court reversed a trial court's failure to hold a competency hearing after the defendant had attempted to commit suicide during the trial. *See Drope*, 420 U.S. at 162-83.

172. The rule, rooted in the common law, is likely a "by-product of the ban against trials in absentia; the mentally incompetent defendant, though physically present in the courtroom, is in reality afforded no opportunity to defend himself." *Id.* at 171 (quoting Caleb Foote, *A Comment on Pre Trial Commitment of Criminal Defendants*, 108 U. Pa. L. Rev. 832, 834 (1960)).

In the Petitioner's case, the trial judge was specifically informed that the Petitioner suffered from "severe mental health issues." The trial judge was also told that, although the Petitioner was previously prescribed psychotropic medications in order to treat these mental health issues, he was no longer taking the psychotropic medications at the time of the plea hearing. In light of this record, the Petitioner submits that the trial court should have ordered a competency

evaluation prior to accepting the Petitioner's guilty plea. There were several warning signs or "red flags" that were ignored by the trial court, such as the Petitioner's "severe" mental health issues, the Petitioner's failure to take his medications at the time of the guilty plea, and the absence of any written documentation or oral testimony from mental health experts stating that the Petitioner was competent. Hence, there was a "bona fide doubt" regarding the Petitioner's competency.[9] The Petitioner prays the

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[9] "[C]ompetency claims can raise issues of both substantive and procedural due process." *Walker v. Att'y Gen.*, 167 F.3d 1339, 1343 (10th Cir. 1999). A procedural competency claim is based upon a trial court's alleged failure to hold a competency hearing (or an adequate competency hearing), while a substantive competency claim is founded on the allegation that an individual was convicted while, in fact, incompetent. *See id.* at 1343-44. The instant case concerns claims of both substantive and procedural due process (i.e., the trial judge failed to hold a competency hearing and the Petitioner was convicted while incompetent). "To prevail on the procedural claim, 'a petitioner must

Court to grant certiorari in this case in order to reexamine/reemphasize the procedures that courts must follow before accepting guilty pleas from criminal defendants with mental health issues (i.e., the responsibility of the court to ensure that a criminal defendant is competent prior to entering a guilty plea, what information triggers the requirement that a court order a competency evaluation, etc.).

Alternatively, the Petitioner submits that he is entitled to an evidentiary hearing on his postconviction claim that he was not competent at the time of the plea hearing. Contrary to the state trial judge's conclusion, the Petitioner's incompetency claim is not "rebutted by the record." The *only doctor* who has offered an

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establish that the state trial judge ignored facts raising a bona fide doubt regarding the petitioner's competency.'" *Id.* at 1343 (quoting *Medina v. Singletary*, 59 F.3d 1095, 1106 (11th Cir. 1995)).

opinion on the issue (Dr. Rothschild) has concluded that the Petitioner's behavior was "incongruent with competence to proceed in court" (and notably, shortly after the Petitioner entered his guilty plea, the Petitioner "was floridly psychotic with disorganized thoughts, hallucinations, and delusion[al] thinking"). Although defense counsel at the plea hearing claimed that he had discussed the Petitioner's discontinuation of medication with his "confidential doctor" and the doctor "did not disagree with it," in his report, Dr. Rothschild *refutes this allegation*: "Dr. Meadows was *not* aware . . . if antipsychotic medications were continued or stopped prior to the plea" hearing. (Pet. App. 10a-11a) (emphasis added).

Accordingly, for the reasons set forth above, the Petitioner respectfully requests the Court to grant this petition for writ of certiorari in order to address these

important issues. The need for guidance from this Court on these issues is acute, as the issues have the potential to affect a substantial number of cases nationwide. The Petitioner's case is the proper case for the Court to address these important issues.

I. CONCLUSION

The Petitioner respectfully requests the Court to grant the petition for writ of certiorari.

Respectfully Submitted,

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COUNSEL FOR THE PETITIONER

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SUPREME COURT OF THE UNITED STATES

JEREMY SMITH,
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v.

STATE OF FLORIDA,
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On Petition for Writ of Certiorari to the Florida First District Court of Appeal

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO.: 1D09-0974

JEREMY SMITH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed November 23, 2009.

An appeal from the Circuit Court for Duval County.
Linda F. McCallum, Judge.

Michael Robert Ufferman of Michael Ufferman
Law Firm, P.A., Tallahassee, for Appellant.

Bill McCollum, Attorney General, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED,

BARFIELD, KAHN, and VAN NORTWICK, JJ., CONCUR.

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December 23, 2008

Michael Ufferman, Esq.
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Re:	Jeremy Douglas Smith
DOB:	09/28/79
Case:	2005-CF-012716-AX State of Florida v. Jeremy Smith

Preliminary Report

Dear Mr. Ufferman,

Per your request, I am submitting a preliminary report of my evaluation of Mr. Smith, which you had requested to determine whether mental health issues might he the basis for appellate claims in the above referenced case. You specifically requested that I evaluate the following:

1.) Mr. Smith's competence to proceed at the time he submitted a motion for postconviction relief.

2.) Mr. Smith's competence to proceed at the time he changed his plea to guilty.

3.) Whether Mr. Smith met Florida's statutory criteria for a defense of Not Guilty by Reason of Insanity.

As you are aware, although I evaluated the defendant (for approximately four and a half hours), interviewed his family, reviewed all available records, and communicated with Dr. Meadows (prior evaluator), I have not completed the evaluation nor formed conclusions on the latter two issues because I

am awaiting receipt of critical, collateral information (particularly the Duval County Jail medical records),

Background:

Jeremy Smith is a 29-year-old, single, Caucasian male currently serving a 40-year prison sentence after pleading guilty to second-degree murder on June 27, 2006. Mr. Smith has a history of a severe, psychotic mental illness, which first manifested and necessitated involuntary, psychiatric hospitalization in 2004, one year prior to killing the victim. He has continued to have unquestioned problems with severe mental illness, i.e., Schizoaffective Disorder, which has required intensive, inpatient psychiatric treatment within the Florida Department of Corrections (DOC), most recently at Lake Correctional Institute. His psychotic mental illness manifests with auditory hallucinations (hearing voices), visual hallucinations (seeing the faces and bodies of individuals that are not there), delusions of reference (believing that unrelated

news or neutral stimuli are directly related to him when they are not), and persecutory delusions including delusions of thought control and mind reading. He also suffers from recurrent episodes of severe depression. Related to compliance with prescribed psychotropic medication, the severity of his psychotic disorder waxed and waned prior to entering the Florida Department of Corrections. He stopped taking his medications approximately six to eight weeks before the killing and had an associated return of persecutory delusions, which had remitted (prior to the taking) while taking prescribed medications. According to Mr. Smith and his family, while he was awaiting trial in the Duval County Jail, psychotropic medications were restarted and subsequently stopped, i,e., before he changed his plea to guilty. Subsequent to entering the DOC, his mental condition decompensated with greater severity and persistence of psychotic symptoms, in part related to two or three incidences of Mr. Smith

suffering sexual assaults. He has subsequently experienced symptoms of Post-Traumatic Stress Disorder (PTSD) with flashbacks to the sexual assaults, nightmares, hallucinations of the perpetrators' voices, and recurring thoughts of the traumatic events. His perceptual disturbances, i.e., auditory hallucinations, visual hallucinations, and paranoia are currently intertwined with symptoms of PTSD.

Competence to proceed at the time Mr. Smith submitted a motion for postconviction relief, i.e., July 8, 2007:

Regarding Mr. Smith's competency to proceed at the time he submitted a motion for postconviction relief, pro se, it is my opinion with a reasonable degree of medical certainty that due to his mental illness at the time, he was not competent to represent himself and he was unable to follow through on the motion. Because of his mental illness with associated disorganized thinking and paucity of thought, he lacked the

insight necessary to consider the possibility of obtaining an attorney who could have helped represent him or facilitated the process for him, which his family would have supported (They were surprised when they learned that he had filed the motion without professional help). Advocating for Mr, Smith, a fellow inmate in the psychiatric facilities of Lake Correctional Institute suggested and initiated the process of completing the forms for postconviction relief. The other inmate, a dermatologist, completed the forms for Mr. Smith. Mr. Smith understood the purpose of the postconviction relief process and provided information for the forms. However, Mr. Smith also believed the individual completing the forms had the ability to read and control his thoughts (delusions). Mr. Smith was unable to read the forms due to severely blurred vision (an adverse effect of the high dose antipsychotic medications he was taking at the time). Additionally, Mr. Smith was hearing voices regularly and believed that other inmates were trying to harm him.

Mr. Smith could not have completed the forms by himself and was unable to follow through on them accordingly. Soon after filing the motion for post conviction relief, against the medical recommendations of his treating psychiatrist and therapist, Mr. Smith decided to leave the segregated, psychiatric treatment facility to enter a general population (his treatment providers were concerned that he was not ready for this). Within a few days, Mr. Smith stopped taking prescribed antipsychotic medications and decompensated severely with increased frequency/intensity of hallucinations, delusional thoughts, inability to think clearly, paranoia, and associated, severe lack of self-care. Due to the severe decompensation, he was readmitted to the inpatient psychiatric facility and was restarted on antipsychotic medications. During the period of decompensation (prior to restarting the medications) he received a letter of denying his motion for postconviction relief. Because of his decompensation, he did not follow up with the

denial letter. Instead, he was preoccupied with persecutory delusions (and possible real threats to his safety), which compelled him to not eat or bathe.

Regarding the defendant's competency to proceed at the time he changed his plea to guilty on July 28, 2006:

Due to his severe mental illness and possible lack of treatment at the time, I have significant concerns about the defendant's competency to proceed when he changed his plea to guilty on July 28, 2006. Prior to the plea change, Mr. Smith was evaluated by a forensic psychologist, William Meadows, Ph.D., on November 11, 2005, December 22, 2005, and June 6, 2006. Dr. Meadows opined that at the time of the evaluations, the defendant was competent to proceed. However, Dr. Meadows was not aware if and what psychotropic medications the defendant was taking at the times of the evaluations or if antipsychotic

medications were continued or stopped prior to the plea change. The defendant's family stated that Duval County Jail healthcare providers prescribed medications to treat Mr. Smith's mental illness, but they were stopped prior to his plea change. A few days after Mr. Smith changed his plea, when he entered the Department of Corrections, Mr. Smith was floridly psychotic with disorganized thoughts, hallucinations, and delusions thinking (a mental state incongruent with competence to proceed in court).

Jail medical records are routinely reviewed as part of all competency and sanity evaluations. I first requested these records in June 2008, when retained to perform this evaluation. It is my understanding that these records have not yet been released despite your efforts to obtain them. In order for me to reach conclusions regarding his competency to proceed at the time that he changed his plea, it will be necessary to review mental health treatment records from the

Duval County Jail, particularly regarding contemporaneous evaluations of Mr. Smith's mental status, what medication he was prescribed, and if/why they were discontinued.

Mental status at the time of the offense, September 6, 2005:

Regarding his mental status at the time of the offense, there is evidence that at the time of the killing, Mr. Smith was suffering from a decompensation of his psychotic mental illness due to non-compliance with prescribed medications and that psychotic thinking motivated his behavior. However, without the requested collateral information, including the Duval County Jail medical records, I am unable to form an opinion with a reasonable degree of medical certainty that Mr. Smith met statutory criteria for a defense of Not Guilty by Reason of Insanity.

Despite its limitations, I hope you find this preliminary report helpful. As I have

previously discussed with you, upon receipt of the additional, collateral information, I will submit a more detailed and conclusory report.

If you have any further questions about this matter, I would be happy to discuss them with you. I can be reached by telephone at (727) 786-8000.

Sincerely,

Darren M. Rothschild, MD

Board Certified in General Psychiatry

Board Certified in Forensic Psychiatry

THE COURT: And counsel, are you aware of any mental health issues regarding your client?

MR. ANDUX: Yes, sir, I think he has had some severe mental health issues. They have had him seen by a doctor, the doctor has told us that he is competent.

Also, Mr. Smith probably up to about two and a half months ago had been taking some psychotropic medications at the jail. He has been taken off those psychotropic medications, and he is not on any medications at this time.

THE COURT: And that was at the doctor's direction?

MR. ANDUX: That was at a doctor's direction from the jail. I discussed it with our doctor, our confidential doctor, and the confidential doctor did not disagree with it.

THE COURT: All right. But you have not had any information either through the doctors you've hired, or through any other physicians that have examined Mr. Smith that there are any, currently

as he stands here today that there are any mental health issues that would affect his ability to understand what's going on?

MR. ANDUX: Not his competence or his ability to understand what's going on, that's correct, Your Honor.